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ORPHANS' COURT AND REGISTER OF WILLS,  
DISTRICT OF COLUMBIA.

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By William Henry Dennis.

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Read before the Society, March 6, 1899.

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The office of the Register of Wills of the District of Columbia, or what is almost synonymous, the Orphans' Court, corresponds quite closely to what we read about in English books as "Doctors' Commons," in London, and some of the same romance and interest attaches to it.

After an existence of nearly a century, the office is now marked for extinction by the pending code of laws prepared by Mr. Justice Cox, which, if adopted, will abolish also the mournful name of "Orphans' Court," and substitute a Probate Court, having jurisdiction over divorces as well as wills.

In view of this, a retrospect of the office and its history may be considered especially appropriate just now.

It is rather curious that both the parent State of Maryland and the present District have found it so difficult to settle upon a system of administering testamentary law that would be satisfactory and consequently permanent.

In Maryland, as far back as 1641, jurisdiction over testamentary matters was vested in the lieutenant governor of the Province. Afterward a prerogative court was established, presided over by a "commissary-general." This title was not given because he dealt with the provisions of the wills, but is taken from the canon law, and testified to the ecclesiastical origin of such

tribunals. A statute passed in 1715 regulated this court, but was repealed in 1777, when the legislature abolished the commissary-general and directed that seven of the justices of the peace should be commissioned as justices of the orphans' court in each county. In 1791, the number of justices was reduced from seven to three. When the District of Columbia began its separate career in 1801, Congress reduced the orphans' court to one judge. In 1870, this judgeship was abolished, and it was enacted that one of the Justices of the Supreme Court of the District of Columbia should hold a special term with the powers of the old Orphans' Court. The office of Register of Wills was then preserved, but, as just stated, another change is now in prospect.

This special term of the court has some unique features. It is the only court in existence which issues writs in the name of "The United States." All other Federal courts issue their writs, in rather monarchical style, as coming from "The President of the United States." The impersonal form was found very appropriate on one occasion, in 1869, when the then President of the United States (General Grant) came into the Orphans' Court to take out letters testamentary as executor of the will of Gen. John A. Rawlins. Somewhat of a "Pooh-Bah" effect would have been produced if the letters testamentary had been from himself as President to himself as executor.

If the court felt any elation at having the Chief Magistrate before it as a suitor and an officer of the court, it was the pride that goeth before a fall. It is said that personal observations of the judicial methods prevailing at that time led to the prompt approval by the President of the law passed the following year, abolishing the court altogether.

In 1801, President Jefferson having appointed William Hammond Dorsey as the first judge of the Orphans' Court for Washington county, and John Hewitt, Register of Wills, the court held its first session at the house of William Rhodes, afterward called Rhodes' Hotel, on Tuesday, April 14, 1801.

It continued to meet about one day in each month for a number of years, but gradually increased the frequency of its sessions until as early as 1838 it formally resolved to meet twice a week.

A large proportion of its early business consisted in binding out children and young people as apprentices, but in recent times this practice has dwindled away until it has become almost obsolete.

The first will recorded was that of one Gustavus Scott, who describes himself as being "of Washington county and District of Columbia," although for some reason his will was probated in Montgomery county and only a certified copy brought to Washington. Other testators of that time are apt to use the phrase "Territory of Columbia," and one loyal Marylander even speaks of the "City of Washington, in Prince George's county."

The successive judges of the Orphans' Court were as follows:

William Hammond Dorsey, appointed March 26, 1801.

Robert Brent, appointed April 16, 1806.

Richard Bland Lee, appointed August 30, 1819.

Samuel Chase, appointed March 15, 1827.

Nathaniel Pope Causin, appointed June 5, 1838.

William F. Purcell, appointed December 22, 1848.

Judge Causin was appointed under an act approved May 25, 1838, while Judge Chase was still living, but could not perform his duties on account of age and debility.

There was a separate Orphans' Court for Alexandria county, but it ceased when that county was ceded back to Virginia in 1846.

The successive Registers of Wills have been as follows:

John Hewitt, appointed April, 1801.

James H. Blake, appointed July, 1818.

Henry C. Neale, appointed August, 1819.

Edward N. Roach, appointed April, 1836.

Moses Kelly, appointed October, 1861.

Zenas C. Robbins, appointed August 7, 1862.

James R. O'Beirne, appointed November 3, 1866.

Amos Webster, appointed April 16, 1869.

Hiram J. Ramsdell, appointed July 2, 1881.

Dorsey Clagett, appointed August 9, 1886.

Levi P. Wright, appointed September 1, 1890.

J. Nota McGill, appointed September 4, 1895.

James H. Blake was the father of our honored townsman, the late Dr. John B. Blake. Edward N. Roach, who held the office twenty-five years, was the father of the present Senator Roach, of North Dakota. The first four Registers held the office for an aggregate of sixty years, being removed only by death. Moses Kelly failed of confirmation by the Senate, and the policy of more frequent changes of incumbent (though the term of the office is not limited) then began.

Rather unfortunately, it seems, the plan was adopted from the outset of allowing the Register of Wills in lieu of a salary to retain all his fees without reporting, or accounting to any one. We find the second Register complaining to the court that his predecessor, who had held the office for seventeen years, had left papers on file unrecorded, although he had been paid the fees, including the wills for ten years preceding, bonds for thirteen years, and so on, and that the court proceed-

ings for five years were in small memorandum books, or on detached pieces of paper. This continued to be a grievance between outgoing and incoming Registers until recent times, when great improvements began to be made, in a public-spirited way, by the successive incumbents; and the office has never been in such an excellent condition in every way as it has reached under the present Register.

It has been suggested to me that in this paper I give special attention to the wills of those who were the owners of the lands covered by the city of Washington, at the time of the division with the original proprietors in 1792. Land titles inside the old city limits date back only to the time of this division, when all the land was acquired by the United States Government, and subsequently deeded to individual owners, excepting of course the large part retained by the Government. Outside the original city limits titles may and sometimes must be traced further back. The part of the District east of Rock Creek was originally in Prince George's county, the records of which are at Upper Marlboro. The part west of Rock Creek was originally in Montgomery county, the records of which are at Rockville, and in some cases at Frederick, for Montgomery county was carved out of Frederick county during the Revolution.

Daniel Carroll of Duddington owned two large tracts, known as Gern Abby Manor and Carrollsburgh, including the site whereon the Capitol stands, and the Mall. His eastern boundary, between First and Fifth streets east, extended from the Eastern branch to L street north, a distance of about two miles. He left a will dated December 29, 1848, and probated May 19, 1849, dividing his estate into six parts, one part each to his daughters Maria Fitzhugh, Ann C. Carroll, Sarah

Nicholson, Jane Carroll and Rebecca Carroll, and one part to Catharine Brent and Henry May Brent, children of Elizabeth M. Brent. His will contains this passage, which will call to many minds a locality now changed or changing very much:

"Provided \* \* \* that the house in which I now reside, called 'Duddington Mansion,' together with all other buildings and the entire piece of ground or square, including the spring, known on the plat of the city of Washington as Square No. 736 and now enclosed within a brick wall, shall remain undivided in the possession of my unmarried daughters, and shall so continue while two of them remain unmarried."

Miss Jane Carroll, the last survivor, died only a few years ago. The will is signed "Dan'l Carroll of Dudd'n," a method which seems to throw doubt on the story sometimes told that Charles Carroll, in signing the Declaration of Independence first signed only his name, and added the words "of Carrollton" when it was suggested that he did not run much risk of identification by the British Government under such a name as Charles Carroll. The use of a distinguishing suffix to names in legal documents has always been quite a custom in Maryland.

Notley Young, who owned "Duddington Pasture," including the river front from the Mall to Greenleaf's Point, and also the Mill Tract, or Isherwood, in the extreme northeast of the city, besides much land outside the city, left a will dated March 14, 1798, and probated June 29, 1802, making an elaborate division of his lands. As to those in the city of Washington, he provided as follows:

To his wife Mary, for life, his dwelling house and other buildings, and Squares 355, 356, 389, 390, 391, 415 and south of 415.

To his son Benjamin, subject to the above life estate, Squares 355, 356, 389, 390, 329, and square on which stood testator's "new brick stable."

To his son Nicholas, subject to the same life estate, Squares 391, 415, south of 415, and also 439, south of 439, 438, 437, 327 and 353.

To his son Notley (who was a Catholic priest) Square 466, for life, with power to make a will in regard to it, and also his necessary expenses to return to this country.

To his daughter Ann Casanave, Square 232, 233, 265, 267, and south of 267.

To his daughter Elianor, Squares 505, 548, east of 549, east of 548, 497, all testator's property in Square 383, and Square east of 548.

To his grandchildren Elianor Brent and Robert Young Brent (children of Robert Brent), Squares 472, 501, 544, 549, 535, and 598.

As to testator's lots in what he calls the back part of the city of Washington, he directs them to be divided, one-fifth to each of his children except Notley, and one-fifth to his grandchildren.

(Rev. Notley Young left a will dated February 2, 1820, and probated August 11, 1820, making some bequests to charitable and religious purposes.)

Anthony Holmead, who owned "James's Park," where Connecticut and Florida avenues now intersect, left an elaborate will dated January 13, 1802, and probated February 11, 1803. He devised "James's Park" and other property to his wife, Susanna Holmead, for life, and afterward to be sold and the proceeds divided among his children, John and Anthony Holmead, Sarah Speak, and Loveday Buckhannan. His tract called "Widow's Mite," adjoining the city along Rock Creek, was apportioned among his children. To his sons John



and Anthony he left "Pleasant Plains," containing 595 acres, subject to the reservation that his wife should have the liberty to cut fence-rails and fire-wood thereon for the use of the plantation during her life.

Robert Peter, who owned around Washington Circle and the land west of Twenty-third street to Rock Creek and the river, and also a tract north of T street on each side of Fourteenth street, made a will dated May 10, 1802, three written codicils dated respectively October 18, 1804; May 22, 1805, and August 19, 1805, all probated November 29, 1806, and a codicil by word of mouth (bequeathing 20 of his negroes), November 8, 1806. The last codicil was contested by his daughter Elizabeth Dunlap, issues as to his sanity were sent to a jury, and a verdict found sustaining the codicil. The documents taken together are of great length, and give elaborate directions for the apportionment of his property to and among his widow, his sons, Thomas, Robert, David, George and James, and his daughters Elizabeth Dunlap and Margaret Dick. A pathetic touch is given by the anxiety of the testator for his son Alexander, whose habits were evidently unfortunate. The provision for him is reduced in the successive codicils until it is only twenty pounds sterling, but he is recommended to the care of the family "that he may not suffer for clothes, lodging, or diet." John Peter, James Beall, son of George, and Dr. John Weems (whose name appears in other wills of that time) are named as trustees for certain purposes. Benj. Stoddert, Uriah Forrest and James Beall, son of George, are requested to appoint three indifferent persons to make a division of testator's lots in the city of Washington, except such as may be sold for payment of debts and legacies. The daughters are provided for on a basis of £8,000 value in property to each.

Wills of Robert Peter, jr., James Peter, and David Peter were admitted to probate within a few years thereafter.

Samuel Davidson owned a tract of land half a mile square, extending north from about the present site of the Executive Mansion nearly to Scott Circle. His will, dated December 9, 1805, and probated September 13, 1810, shows an earnest zeal to perpetuate the family name of Davidson. Of his lots in this city he devised to his nieces Margaret and Mary, daughters of John Davidson, of Annapolis, and to his nephew John Harris, of Annapolis, those in Square 221; to his niece Mary, wife of Henry H. Chapman, of Charles county, Md., two lots in Georgetown; to Eleanor Davidson, orphan of his nephew William Davidson, all his lots in Square 217, with remainder, if she died under age, to Anne Kerr, to whom were devised lots in Squares 196, 197, 198, 199, 214, 216, 254, 487, 489, and 604; to Mary Pattison, of Dorchester county, Md., all his lots in Square 186, with remainder to his nephew Lewis Grant. To this nephew, Lewis Grant, who, he says, came to this country in 1797, and was then keeping a store at Queen Anne, Prince George's county, he left the residue of his estate, provided the devisee would lawfully take the name of Davidson, in lieu of Grant. If he refused or neglected to do this, the property was to go to Anne Kerr and her heirs male, provided she and they and her husband took the surname of Davidson. If they declined, then it was to go to John Harris on the same condition, and upon like default, to the first son of Henry H. Chapman by Mary, his wife, who should attain 21 and take the name of Davidson. The testator then added, with a touch of petulance: "And in the case that all of them shall neglect or refuse to comply in due time and proper manner with my said favorite and

pointed condition, that of perpetuating my name, then let them all go to heaven their own way," and he directs then that the property pass to the University contemplated by the will of Gen. George Washington, without, however, requiring the University to take the name of Davidson.

General John Davidson, of Annapolis, Md., who owned a similar tract on the east of Samuel Davidson's, surrounding the present Thomas Circle, left a short will dated July 1, 1806, leaving all his property to his children Ann Janette, John Thomas and Pinkney Davidson, subject to the thirds of his widow Ann Maria. This will was probated in Anne Arundel county, March 5, 1807.

William Deakins, jr., who had an interest in a tract of land along the present New Jersey avenue, above N street, by his will dated March 2, 1798, and probated March 12, 1798, in Montgomery county, Md., left his lots in Georgetown and tracts at Seneca Landing to his wife Jane Deakins. His other land, being in great part held together with his brother Francis Deakins, he left to the latter in trust to pay debts and £200 a year for five years to Jane Deakins, and in seven years to divide among his brothers, one-half to Francis Deakins, the residue to Leonard Marbury Deakins and Paul Hoge.

Francis Deakins left a will dated September 24, 1804, and probated in this District, November 14, 1804, making a similar disposition in favor of his widow and his brothers Leonard Marbury Deakins and Paul Hoge.

Benjamin Oden, a wealthy Prince Georgian, who owned a tract extending northwest from Judiciary Square, left a will dated August 31, 1836, probated in Prince George's county, September 30, 1836, devising lands in Washington city to Eleanor West, one of his daughters, and wife of Arthur P. West.

George Walker, who owned a long tract extending north and south of Lincoln Park in East Washington, left a will dated December 10, 1802, and probated January 1, 1803, leaving part of his lot in Georgetown to his son Isaac, and various legacies to his son George, daughter Fannie, and wife Elizabeth, but making no mention of Washington property.

David Burnes, so often mentioned as one of the original proprietors, and who owned "Beal's Levels," extending from about Judiciary Square to west of the White Lot, left no will. John P. Van Ness, husband of his sole heiress, Marcia, was appointed administrator of his estate in 1803, and of Marcia's estate in 1833.

Others of the original proprietors died intestate, for instance, William Prout, who owned land east of Duddington Mansion, and on whose estate letters of administration were granted to Sarah Prout and Jonathan Prout, October 21, 1823, on a bond of \$50,000; Abraham Young, who owned land northeast of Lincoln Park, and whose estate was administered by Gerhard Gibson, December 31, 1804; and William Young, who owned land west of the present jail, and whose estate was administered at the first session of the Orphans' Court in 1801.

No will or administration appears in the District of Columbia in the name of Samuel Blodgett, jr., who owned the Jamaica tract in the northwest, which has caused so much litigation, nor of James M. Lingan, who owned all around the present Dupont Circle; nor of Jacob Funk, who owned "Hamburgh," west of the present War Department.

There were also some small owners or part owners whose titles were acquired by the Government in 1792, but scarcely important enough to justify the search which would be necessary to trace and identify them.

This sketch is far from exhausting the subjects of

interest in the Register of Wills' office, which might prove a rich mine for an investigator.

For instance, the wills of six of the Presidents are recorded there, namely, of George Washington, James Madison, James Monroe, John Quincy Adams, Andrew Jackson and Franklin Pierce, though all are copies, except one, that of James Monroe. Monroe's will was made in New York, and ordinarily should have been probated there; but apparently the only property or expectation he had was a grant from Congress, which he left to his son-in-law, Samuel L. Gouverneur, to pay his debts, and the original will was filed and recorded here in 1849.

The will of "Andrew Jackson, Senior," as he styles himself, similarly bears witness of poverty, for he speaks of having been financially ruined by the debts of his "well-beloved nephew and adopted son," Andrew Jackson, jr.

The will of James Madison, dated in 1835, a copy of which is filed from Orange county, Va., devises his house and lot or lots in the city of Washington to his beloved wife and her heirs.

The will of John Quincy Adams, dated in 1847, leaves his real estate in Washington, including houses on F street, a store and house on Pennsylvania avenue, estate known as Columbia Mills and Square 592, to his son Charles Francis Adams, in trust for testator's granddaughter, Mary Louisa Adams.

There is only one will of a Chief Justice on record here, that of Salmon P. Chase, and it may console budding lawyers for their occasional mistakes to know that, although he intended to devise his real estate in this District, his will has only two witnesses, instead of three, as required for that purpose!

There are also odd and eccentric testaments, dating

from the days when people expressed themselves and their characteristics more freely than at present when making their wills. Such a paper is the will of Caleb Swann, first paymaster general of the army, made in 1807, which gives his military history as a preamble, and requests toward the close that his children "may be taken care of by Phil. B. Key or Francis S. Key, his successor in business, or Doctor John Weems, and effectually protected against all and every sort of injustice and oppression attempted or contemplated to be practiced upon or toward them by wicked and designing men or women, or any individual of either of the sexes," which seems sufficiently comprehensive.

An example of the interesting wills that may be found is one that is somewhat prophetic in its language, written and executed by Thomas Ritchie, an editor and publisher of note in the first half of this century, and a friend of William W. Corcoran and Dr. James C. Hall, who are witnesses of the document. It bears date June 11, 1854, and was probated August 5, 1854, and besides disposing of property includes patriotic passages like the following, which has something in it to suit both the expansionists and the anti-expansionists in contemporary politics:

"We are already the greatest power among the nations. We are destined to be greater still, but let us not be too ambitious of inordinate acquisitions, or too rapid in our advances. Let us fill up the immense territory which we own. Let us not be too anxious to step our foot from the main land to the islands, unless, indeed, as in the case of Cuba, we are threatened by the barbarization of that beautiful island and its conversion into a black and hostile neighborhood. Let us not deny to the inhabitants of other lands a free asylum within our shores, but let us confine ourselves to the

operation of natural causes. In this way we may best acclimate the emigrant to our free institutions, preserve both the rights of the States and the Union of the States. These are two great pillars of American prosperity and glory."